

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HENRY TUTEN	:	CIVIL ACTION
	:	
v.	:	
	:	
FRANKLIN J. TENNIS, <u>et al.</u>	:	NO. 06-1872

MEMORANDUM AND ORDER

Petitioner, Henry Tuten, filed a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254. Presently before the Court is petitioner's Motion for Pre-Trial Transcripts (Doc. No. 38). In particular, he requests that the Court order "the Official Court Reporter . . . to transcribe and provide" to petitioner, see Petr.'s Suggested Order (attached to Petr.'s Mot. for Pre-Trial Tr. (Doc. No. 38)), transcripts related to his third habeas claim alleging ineffective assistance of prior counsel in "failing to move for dismissal of the charges under the Interstate Agreement on Detainers (IAD)," see Petr.'s Mot. for Pre-Trial Tr. at ¶¶ 5-7; see also Hab. Pet. (Doc. No. 3) ¶ 12(C).

The determination of whether to grant an indigent's motion for a transcript in a habeas proceeding is one committed to the Court's discretion, and hinges on the petitioner's demonstration of necessity. See Rodriguez v. Love, 1991 WL 87056, at *1 (E.D. Pa. May 21, 1991). Here, as explained more fully in my Report and Recommendation filed this same date, in that petitioner's third habeas claim is procedurally defaulted, the Court may not review its merits, and Tuten's remaining claims have been found without merit on the record before this Court. Thus, there is no need to order the requested transcription. See Rodriguez, 1991 WL 87056, at

*1-2 (denying motion for transcripts where habeas petitioner's claim was without merit and there was no need for the requested transcripts).

Accordingly, **AND NOW**, this 30th day of July, 2007, upon consideration of petitioner's Motion for Pre-Trial Transcripts (Doc. No. 38), it is hereby **ORDERED** that petitioner's motion is **DENIED**.

BY THE COURT:

s/ L. Felipe Restrepo
L. FELIPE RESTREPO
UNITED STATES MAGISTRATE JUDGE